

April 2, 2012

Via email: [privacyrfc2012@ntia.doc.gov](mailto:privacyrfc2012@ntia.doc.gov)

U.S. Department of Commerce  
National Telecommunications and Information Administration  
1401 Constitution Avenue, NW  
Room 4725  
Washington, DC 20230

Re: Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct;  
Docket No. 120214135-2135-01

The Interactive Advertising Bureau (“IAB”) provides these comments in response to the National Telecommunication and Information Administration’s (“NTIA”) request for input on multistakeholder processes to develop consumer data privacy codes of conduct. We commend the Department of Commerce for its recognition that voluntary codes of conduct are the preferred approach for addressing consumer privacy while fostering online innovation and economic growth. We share the view that self-regulation is an effective way to respond to consumer privacy issues while preserving the tremendous value that online advertising creates for both consumers and the economy.

Founded in 1996 and headquartered in New York City, IAB ([www.iab.net](http://www.iab.net)) represents over 500 leading companies that engage in and support the sale of interactive advertising, including prominent search engines and online publishers. Collectively, our members are responsible for selling over 86% of online advertising in the United States. IAB educates policymakers, consumers, marketers, agencies, media companies and the wider business community about the value of interactive advertising. Working with its member companies, IAB evaluates and recommends standards and practices and fields critical research on interactive advertising. IAB has led, with other prominent trade associations, the development and implementation of cross-industry self-regulatory privacy principles for online data collection.

The IAB is committed to industry self-regulation as the best approach to address consumer privacy concerns while maintaining interactive advertising as a driver of economic growth. The IAB offers the comments below to assist the NTIA in supporting the development of self-regulatory codes that can be voluntarily adopted by industry.

First, as NTIA considers the appropriate approach for facilitating stakeholders’ development of privacy codes of conduct, IAB and its members believe NTIA should first identify specific issues that are not subject to existing statutory regimes or self-regulatory programs and are not being addressed in existing forums. IAB and its members along with our partner trade associations have developed comprehensive state-of-the-art industry codes of conduct backed by credible accountability mechanisms. All of this has been accomplished without government involvement or funding. It is important that NTIA avoid disrupting existing

industry codes or creating duplicative or conflicting obligations on businesses in any process that is convened.

In addition, NTIA should take steps to foster industry participation in the proposed process, specifically by recognizing the important role of private negotiations among industry participants. Businesses, as the intended adherents to codes of conduct, are uniquely positioned to help develop codes that are workable and flexible enough to allow innovation to continue. Moreover, it has been our experience in developing standards for industry that companies are better able to share information and reach consensus when discussions are held in confidence. We therefore believe that preserving room for private discussions among industry will make the multistakeholder process more efficient and productive. We provide more details on these themes below.

## **I. IAB Supports Self-Regulatory Principles**

IAB believes that industry development of best practices, codes of conduct, and standards (collectively, “codes of conduct”) is the best approach to privacy issues in the context of online advertising practices. In existing and emerging self-regulatory frameworks, this approach has been used successfully to address privacy concerns without prescriptive regulation that could inhibit innovation. Unlike formal regulations, which can quickly become outdated in the face of evolving technologies, codes of conduct can allow industry to respond rapidly to new challenges presented by the evolving Internet ecosystem.

IAB believes that self-regulation is the best approach for consumers, businesses, and the U.S. economy. For this reason, IAB was centrally involved with the development of the Self-Regulatory Principles for Online Behavioral Advertising (“OBA Principles”) and for Multi-Site Data (“MSD Principles”). These Principles were released by the IAB in conjunction with the American Association of Advertising Agencies, American Advertising Federation, Association of National Advertisers, Direct Marketing Association, and Network Advertising Initiative, and with the support of the Council of Better Business Bureaus (“CBBB”). This successful self-regulatory effort, now administered by the Digital Advertising Alliance (“DAA”), provides a blueprint for how industry can address emerging privacy issues.

The IAB, with our member companies, has also developed extensive standards for our membership. The IAB has established a Member Code of Conduct, which builds on the DAA’s Self-Regulatory Program.<sup>1</sup> All IAB members are required to adhere to this code and compliance is monitored and enforced by the CBBB. The IAB has also developed overarching privacy principles for interactive advertising, which apply to all IAB members,<sup>2</sup> as well as focused guidance for businesses in areas such as email data management<sup>3</sup> and online lead generation.<sup>4</sup>

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<sup>1</sup> IAB Website, “IAB Member Code of Conduct,” available at [http://www.iab.net/public\\_policy/codeofconduct](http://www.iab.net/public_policy/codeofconduct).

<sup>2</sup> IAB, “Privacy Principles” (adopted 2008), available at <http://www.iab.net/guidelines/508676/1464>.

<sup>3</sup> IAB, “Email Data Management Best Practices” (2008), available at [http://www.iab.net/media/file/email\\_data\\_mgt\\_best\\_practices0908.pdf](http://www.iab.net/media/file/email_data_mgt_best_practices0908.pdf).

## II. Existing Self-Regulatory Codes of Conduct

At the outset, IAB recommends that NTIA survey existing and emerging self-regulatory codes of conduct before identifying specific issues that may be considered through a multistakeholder process. The business community has invested significant resources to develop effective codes of conduct and accountability mechanisms to address specific privacy concerns.

The examples above are just a few of the many robust, voluntary industry programs that promote best practices to protect consumers while fostering economic growth and market innovation. These programs have been established through the initiative of the business community, without any need for government involvement or public funding.

NTIA should ensure that such existing codes of conduct can continue to operate and evolve through the forums that already support these initiatives. Moreover, any new multistakeholder process should not reconsider areas already covered by existing codes. This approach will promote certainty with respect to acceptable industry practices and will help avoid duplicative or contradictory obligations for businesses, which could discourage future self-regulation. In addition, by surveying existing codes, NTIA can identify and replicate the common attributes among initiatives that have resulted in successful standards and programs.

## III. Industry Leadership

In IAB's experience, industry leadership in the process of developing codes of conduct is essential to the creation of workable standards as well as to broad adoption of the resulting codes of conduct. To that end, the multistakeholder process should encourage private negotiations among companies as a means to advance the broader process.

The Administration has proposed an open and transparent process to develop codes of conduct. The IAB believes that any process convened by the government cannot succeed unless transparency is balanced with ample room for companies to engage in private discussions. In a competitive market, companies can better engage in a frank exchange of ideas and discussion of their business models if their contributions can be held in confidence when needed. In particular, companies would be understandably wary of sharing proprietary or sensitive information with advocacy groups and academics that have a history of attacking companies through litigation, complaints to regulators, and media commentary. The IAB therefore believes the multistakeholder process should allow for both public and private negotiations among industry participants. As in past self-regulatory initiatives, such negotiations would help to foster consensus and advance the process more efficiently.

The example of the DAA's Self-Regulatory Program demonstrates the merits of industry leadership and the important role of private negotiations. As described, IAB and other industry leaders have developed a robust and comprehensive self-regulatory program for the collection

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<sup>4</sup> IAB, "Online Lead Generation: B2C and B2B Best Practices for U.S.-based Advertisers and Publishers" (2008), available at <http://www.iab.net/media/file/B2CandB2BBestPracticesFINALv3.pdf>.

and use of Web viewing data. Hundreds of companies, including IAB members, are now participating in this program. In line with the Department's vision, the OBA and MSD Principles were generated through a multistakeholder process involving 11 trade associations and 25 companies that met regularly to achieve consensus. This effort, which has been applauded by the Administration, resulted in comprehensive principles and a unique Advertising Option Icon to foster consumer-friendly standards across the Internet data ecosystem – at no cost to taxpayers.

#### IV. Government as a Convener

The Administration's White Paper has appropriately recognized that NTIA should have a limited role in the multistakeholder process, and that "the stakeholders themselves will control the process and its results."<sup>5</sup> We urge the NTIA to adhere to this commitment that the agency will not substitute its own judgment and will allow industry stakeholders to lead the development of codes of conduct.<sup>6</sup> As the White Paper states, "there is no Federal regulation at the end of the process."<sup>7</sup> Thus, the success of the Administration's proposal will depend on the ability of any codes to attract industry's voluntary participation and adherence.

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The IAB and its member companies are committed to meaningful self-regulation as a way to address consumer privacy issues without stifling economic growth. To that end, the IAB appreciates the opportunity to provide these comments to the NTIA. Please contact me at (202) 253-1466 with any questions.

Sincerely,

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Senior Vice President, Public Policy & General Counsel  
Interactive Advertising Bureau

cc: Stuart Ingis, Venable LLP  
Michael Signorelli, Venable LLP

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<sup>5</sup> The White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* 24 (February 2012) (hereinafter "White House Framework").

<sup>6</sup> *Id.* at 27.

<sup>7</sup> *Id.* at 24.